

STATE OF NORTH DAKOTA
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF:)
)
North Dakota State Board of)
Medical Examiners,)
)
Complainant,)
)
v.)
)
Hal Bradley Heyer, M.D.,)
)
Respondent.)
)

**RECOMMENDED
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

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On December 9, 1999, a Complaint was filed with North Dakota State Board of Medical Examiners (“Board”) by Mr. John M. Olson, Special Assistant Attorney General, Counsel for the Board, (the Complainant) requesting “appropriate disciplinary action” against the license of Hal Bradley Heyer, M.D., the Respondent (“Heyer”). The complaint cites as grounds for disciplinary action N.D.C.C. § 43-17-31(9). Specifically, the Complaint alleges that Heyer violated a provision of the medical practice act or the rules and regulations of the Board, or any action, stipulation, condition or agreement imposed by the Board. The Complaint further alleges that Heyer was ordered to enroll in the Impaired Physicians Program (“Program”) and to comply with all of the terms and conditions of the Program which was a restriction placed on Heyer’s license to practice medicine in North Dakota on July 23, 1999. The Complaint further alleges that Heyer was sent a letter on October 8, 1999, together with documents titled “Statement of Intent to

Participate” and “Treating Physicians Memo of Understanding,” which were not returned within ten days as specifically required by the Board.

The Complaint was personally served on Heyer on February 8, 2000, by the St. Louis County (Minnesota) Sheriff.

On March 6, 2000, the Board requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the Complaint. On March 8, 2000, the undersigned ALJ was designated.

On March 13, 2000, the ALJ issued a Notice of Hearing. The Notice of Hearing was served upon Heyer by Certified mail, apparently received by him on March 28, 2000 (according to the returned green card). The notice scheduled an April 10, 2000, administrative hearing.

The hearing was held as scheduled on April 10, in the Office of Administrative Hearings, Bismarck, North Dakota. The Board was represented at the hearing by Mr. Olson. Mr. Olson called one witness, Mr. Rolf Sletten, the Board’s Executive Secretary and Treasurer. Mr. Olson offered eleven (11) exhibits as evidence, all of which were admitted. Heyer was not present at the hearing; neither was he represented at the hearing.

At the close of the evidentiary portion of the hearing, Mr. Sletten gave a recommendation about the appropriate disciplinary action to be taken by the Board. No opening or closing argument was given.

Based on the evidence presented at the hearing and the recommendation of Mr. Sletten, administrative law judge makes the following recommended findings of fact and conclusions of law.

FINDINGS OF FACT

1. Although Heyer was duly served with the Complaint and the Notice of Hearing in this matter, he did not attend the hearing. Heyer did not contact the ALJ about the hearing. However, he did contact both Mr. Sletten and Mr. Olson about the hearing. Mr. Olson talked twice to Heyer on the telephone. Heyer told Mr. Olson that he would not be attending the hearing.

2. Heyer is currently licensed to practice medicine in the State of Minnesota. Apparently, Heyer is currently practicing medicine in the State of Minnesota.

3. On February 12, 1999, Heyer applied for a license to practice medicine in North Dakota.

4. As a result, the Board learned of Heyer's alcohol abuse problem. *See* exhibit 1.

5. On July 23, 1999, the Board issued to Heyer its Informal Decision to Restrict License. Exhibit 1. In its informal decision, the Board said that it was issuing Heyer a license to practice medicine subject to the term, condition or restriction that "Heyer will enroll in the North Dakota Board of Medical Examiners Impaired Physicians Program and will comply with all of the terms and conditions of that Program for a period of at least five (5) years." *Id.* On July 23, 1999, the Board conditionally issued License No. 8269 to Heyer. *Id.*

6. On August 31, 1999, the Board issued to Heyer its Notice of Informal Decision. In that notice the Board said that it had made an informal decision to grant Heyer's application for licensure subject to the specified restriction. The notice informed Heyer of his right to request a formal hearing on his application.

7. Heyer did not request a formal hearing on his application for licensure. On November 10, 1999, the Board issued to Heyer its Formal Decision to Restrict Licensure. This

is the Board's formal decision, after opportunity for hearing, to conditionally issue a North Dakota license to Heyer. Exhibit 3.

8. At the Board's July 23, 1999, meeting, the Board discussed with Heyer the requirement that he participate in the Program and that Heyer would facilitate the transfer of documents from Minnesota to North Dakota. The Board discussed with Heyer that he could satisfy reporting requirements in North Dakota by having documents sent from the Minnesota program to the Program. *See* exhibit 11.

9. On October 8, 1999, Program Director Kay Graff sent to Heyer a "Statement of Intent to Participate" and "Treating Physician's Memo of Understanding" for him to fill out and sign, and for his treating physician to fill out and sign. *See* Exhibit 4. The Program was not requiring Heyer to duplicate Minnesota random drug/alcohol screenings but was indicating that it would accept Minnesota screening results. The letter asked that the two documents be returned to the Program within ten (10) days. *Id.*

10. On November 5, 1999, Graff again wrote to Heyer stating that he had not returned the two Program documents within ten days and that she would inform the Board's Investigative Panel A of that fact. Exhibit 5 (letter sent certified mail, *see* exhibit 6).

11. On November 15, 1999, the Program received Heyer's signed Statement of Intent to Participate (signed by Heyer) and the signed Treating Physician's Memo of Understanding (signed by Heyer and his treating physician). *See* exhibits 7 and 8.

12. The Program also received from Heyer a form from the Minnesota program for impaired physicians ("Health Professional Services Program") providing consent to release information to the Board. Exhibit 9 (form signed by Heyer and dated November 3, 1999).

13. On January 5, 2000, Graff again wrote to Heyer stating that the Program had not received “a quarterly report from your treating physician or your A.A. sponsor.” Exhibit 10. To date, the Program has not received the quarterly report from Heyer.

14. Mr. Sletten testified that the Board believes that physicians are strictly required to comply with the Program.

15. Heyer has not renewed his license to practice medicine in North Dakota.

CONCLUSIONS OF LAW

1. Heyer is currently a physician licensed to practice medicine in Minnesota. He is apparently, currently practicing medicine in Minnesota. In 1999, Heyer was issued a license to practice medicine in North Dakota subject to a restriction or condition that he “will enroll in the North Dakota Board of Medical Examiners Impaired Physicians Program and will comply with all of the terms and conditions of that Program for a period of at least five (5) years.” Exhibit 3; *see* exhibit 1. Heyer does not have a current license to practice medicine in North Dakota because he has not renewed his license.

2. The evidence shows, by the greater weight of the evidence, that Heyer violated the provisions of N.D.C.C. § 43-17-31(9) in that although he was ordered to enroll in the Program and to comply with all of the terms and conditions of the Program, as a restriction or condition placed on his license to practice medicine in North Dakota, he did not fully comply. Heyer did not timely return two required Program documents (the Statement of Intent to Participate and the Treating Physician’s Memo of Understanding) and he did not return to the Program (at all) his quarterly report from his treating physician or his A.A. sponsor.

3. Heyer did not strictly comply with the requirements of the Program. Failure to comply with the Program is a violation of N.D.C.C. § 43-17-31(9).

4. The Board may take disciplinary action against the license to practice medicine of any North Dakota physician under N.D.C.C. § 43-17-30.1 for any violation proven under N.D.C.C. § 43-17-31.

5. In disciplinary proceedings in which disciplinary action is imposed, the Board may direct the physician to pay the Board a sum not to exceed the reasonable and actual costs, including attorney's fees, incurred by the Board in the investigation and prosecution of the case. N.D.C.C. § 43-17-31.1.

RECOMMENDED ORDER

The greater weight of the evidence shows that Heyer violated the provisions of N.D.C.C. § 43-17-31(9). As a result of the violation, at the hearing Mr. Sletten recommended that if Heyer renews his North Dakota license to practice medicine, his license be placed on probation indefinitely, or for so long as Heyer is required to participate in the Minnesota program for impaired physicians; that Heyer continue to participate in the Minnesota program for impaired physicians and that the Minnesota program provide the Board with all of Heyer's program reports; and that Heyer pay the costs associated with this administrative action. At the hearing, Mr. Olson said that he agrees with Mr. Sletten's recommendation. The ALJ, too, agrees with Mr. Sletten's recommendation. It is ORDERED that if Heyer renews his license to practice medicine in North Dakota, his license is placed on probation indefinitely, or for so long as Heyer is required to participate in the Minnesota program for impaired physicians. It is FURTHER ORDERED that if Heyer renews his North Dakota license, he is required to participate in the Minnesota program for impaired physicians and comply with that program, and to facilitate the

Minnesota program providing the Board (the Program) with all of Heyer's Minnesota program reports. It is FURTHER ORDERED that Heyer pay all of the costs associated with this administrative action in accordance with the provisions of N.D.C.C. 43-17-31.1 in an amount determined by the Board and under such terms as stated by the Board in a separate letter.

Dated at Bismarck, North Dakota, this 11th day of April, 2000.

State of North Dakota
Board of Medical Examiners

By: _____
Allen C. Hoberg
Administrative Law Judge
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